

# **METROPOLITAN AREA PLANNING COMMISSION**

## **MINUTES**

**September 10, 2009**

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, September 10, 2009, at 1:30 P.M., in the Planning Department Conference Room, 10<sup>th</sup> floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: Darrell Downing, Chair; G. Nelson Van Fleet, Vice Chair; Shawn Farney; David Foster; Bud Hentzen; Hoyt Hillman; Bill Johnson; Joe Johnson (in @1:33 P.M.); Ronald Marnell; John W. McKay Jr. (in @1:35 P.M.); M.S. Mitchell; Don Sherman and Debra Miller Stevens. David Dennis was absent. Staff members present were: John Schlegel, Director; Dale Miller, Current Plans Manager; Neil Strahl, Senior Planner; Bill Longnecker, Senior Planner; Derrick Slocum, Associate Planner; Joe Lang, Chief Deputy City Attorney; Bob Parnacott, Assistant County Counselor and Maryann Crockett, Recording Secretary.

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1. Approval of the August 20, 2009 MAPC meeting minutes:

**MOTION:** To approve the August 20, 2009 Minutes as amended.

**MILLER STEVENS** moved, **VAN FLEET** seconded the motion, and it carried (11-0).

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2. Election of officers: Chairman and Vice Chairman

**CHAIRMAN DOWNING** opened the floor for nominations.

**MOTION:** To nominate **VAN FLEET** for Chair and **MILLER STEVENS** for Vice Chair.

**MITCHELL** moved, **HENTZEN** seconded the motion, and it passed unanimously (11-0).

**PAST CHAIRMAN DOWNING** thanked the Commission for their support during his tenure as Chairman. He also thanked **DIRECTOR SCHLEGEL** and staff for doing such a great job supporting the Commission's efforts. He concluded by thanking legal counsel for their input and involvement with all projects.

**VAN FLEET** in the Chair.

**J. JOHNSON** (in @1:33 P.M.)

**CHAIRMAN VAN FLEET** thanked the Commission for their vote of confidence and said he was looking forward to the challenge of chairing the group. He also mentioned living up to the standards set by the past Chairman. He said he had no personal agenda and added that he has always been impressed with the congeniality of members in that when there are disagreements, they are agreeable disagreements.

**MCKAY** (in @1:35 P.M.)

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**3. CONSIDERATION OF SUBDIVISION COMMITTEE RECOMMENDATIONS**

**3-1. SUB 2003-02: Final Plat -- HEARTLAND PREPAREDNESS CENTER ADDITION,**  
located on the east side of Hydraulic and south of 29th Street North.

**NOTE:** This is an unplatted site located within the City. The applicant will be requesting a Conditional Use for safety services.

**STAFF COMMENTS:**

- A. City of Wichita Water Utilities Department has required the applicant to guarantee the extension of water (transmission and distribution mains) and sewer (mains and laterals) to serve the lot being platted.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. City Stormwater Engineering has requested revisions to the drainage plan.
- D. A guarantee shall be provided for a turnaround for the terminus of New York Avenue.
- E. The adopted 2008 Wichita Park, Recreation, and Open Space Plan (PROS Plan) identifies the need for a pathway to connect the existing I-135 and K-96 bike paths. The Subdivision Committee has approved a contingent public access easement along the west line of the plat, extending south from Hydraulic.
- F. Complete access control has been denoted along the south portion of Lot 1. Access control needs to be defined along the remainder of the frontage.
- G. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- H. The platting text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- I. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- J. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- K. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the United States Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- L. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any

such requirements.

- M. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State National Pollutant Discharge Elimination System Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- N. Perimeter closure computations shall be submitted with the final plat tracing.
- O. Westar Energy has requested additional easements. An existing KGE easement shown on the preliminary plat along the east property line also needs to be denoted on the final tracing.
- P. A compact disc (CD) should be provided, which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. If a disc is not provided, please send the information via e-mail to Cheryl Holloway (E-Mail address: [cholloway@wichita.gov](mailto:cholloway@wichita.gov)). Please include the name of the plat on the disc.

**CHAIRMAN VAN FLEET** announced that this item was deferred for two weeks to September 24, 2009.

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**3-2. SUB 2009-43: Revised One-Step Final Plat -- SKYWAY INDUSTRIAL PARK 2ND ADDITION**, located on the south side of 31st Street South and on the east side of Maize Road.

**NOTE:** This is a replat of the Skyway Industrial Park Addition and the Dugan Industrial 3<sup>rd</sup> Addition. The plat includes the vacation of four unimproved streets - 34<sup>th</sup> St. South, Crestline, Calvert St and Norman St.

This revised plat includes one additional lot.

**STAFF COMMENTS:**

- A. City of Wichita Water Utilities Department advises that water is available. A guarantee is needed for the extension of sewer (laterals) to serve all the lots being platted.
- B. If improvements are guaranteed by petition(s), a notarized certificate listing the petition(s) shall be submitted to the Planning Department for recording.
- C. City Stormwater Engineering has approved the drainage plan. The final tracing needs to be revised to reflect the drainage plan. Minimum pad revisions are needed. Reserve D needs to be referenced in the plat's text for drainage purposes. Reserve A needs to incorporate the adjoining drainage easement. Reserve F needs to be widened by 20 feet on the north and west side. The north line of Reserve D needs to be relocated to the north ten feet to include the top of the pond bank and include some area for pond maintenance access.
- D. The plat proposes two access openings along 31<sup>st</sup> St. South, three access openings along each side of Tyler and three access openings along Maize Road. Traffic Engineering has approved the access controls subject to the plat including a note specifying that the location of all access openings shall be in accordance with minimum spacing requirements of the Wichita/Sedgwick County Access Management Standards. The plat's text shall be corrected to denote two openings along 31<sup>st</sup> St. South.

- E. The applicant shall guarantee the closure of any driveway openings located in areas of complete access control or that exceed the number of allowed openings. A Driveway Closure Certificate in lieu of a guarantee may be provided.
- F. Provisions shall be made for ownership and maintenance of the proposed reserves. A covenant shall be submitted regarding ownership and maintenance responsibilities.
- G. For those reserves being platted for drainage purposes, the required covenant that provides for ownership and maintenance of the reserves, shall grant to the appropriate governing body the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- H. The applicant shall submit an avigational easement covering all of the subject plat and a restrictive covenant assuring that adequate construction methods will be used to minimize the effects of noise pollution in the habitable structures constructed on subject property.
- I. The signature line for the City Clerk needs to be revised to reference "Karen Sublett".
- J. The final plat tracing needs to be submitted on a maximum page size of 24" x 36".
- K. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- L. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- M. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- N. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the United States Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- O. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- P. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State National Pollutant Discharge Elimination System Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- Q. Perimeter closure computations shall be submitted with the final plat tracing.

- R. A compact disc (CD) should be provided which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. If a disc is not provided, please send the information via e-mail to Cheryl Holloway (E-Mail address: [cholloway@wichita.gov](mailto:cholloway@wichita.gov)). Please include the name of the plat on the disc.

**MOTION:** To approve subject to the recommendation of the Subdivision Committee and staff recommendation.

**MCKAY** moved, **DOWNING** seconded the motion, and it carried (13-0).

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**3-3. SUB 2009-55: One-Step Final Plat -- NOMAR PUBLIC MARKET, FIRST ADDITION,**  
located on the northwest and southwest corners of 21st Street North and Broadway.

**NOTE:** This is a replat of the Steel and Swentzell's Highland 2<sup>nd</sup> Addition and the Gossard's Subdivision of the Gossard's Addition. The applicant requests a zone change (PUD 2009-03) from GC General Commercial to PUD Planned Unit Development.

**STAFF COMMENTS:**

- A. This plat will be subject to approval of the associated zone change and any related conditions of such a change.
- B. City of Wichita Water Utilities Department advises that water and sewer services are available to serve both lots.
- C. If improvements are guaranteed by petition(s), a notarized certificate listing the petition(s) shall be submitted to the Planning Department for recording.
- D. City Stormwater Engineering has approved the drainage plan.
- E. County Surveying advises that the bearing of S89°06'36"E near the northeast corner of section 8 needs corrected.
- F. County Surveying advises that the dimension of 10.14' near the northwest corner of Lot 2 needs clarification.
- G. The new lot lines should be denoted with solid lines.
- H. The solid line enclosing the portion of the existing 21<sup>st</sup> Street right-of-way shall be deleted.
- I. GIS has requested N. Broadway Street be labeled as N. Broadway Ave. N. Market Street shall be labeled as N. Market St. N. 21st Street should be labeled as 21<sup>st</sup> St. N.
- J. Access controls need to be denoted on the plat and referenced in the plat's text. The PUD denotes one opening along Broadway for Lot 2 and one opening along 21<sup>st</sup> St. North for Lot 2.
- K. The lots shall be renumbered as Lot 1, Block 1, and Lot 1, Block 2.
- L. The owner's certificate in the plat's text shall include reference to "lots, blocks and streets".
- M. The plat's text shall include language that a drainage plan has been developed for the plat and that

all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.

- N. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- O. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- P. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the United States Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- Q. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- R. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State National Pollutant Discharge Elimination System Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- S. Perimeter closure computations shall be submitted with the final plat tracing.
- T. A compact disc (CD) should be provided, which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. If a disc is not provided, please send the information via e-mail to Cheryl Holloway (E-Mail address: [cholloway@wichita.gov](mailto:cholloway@wichita.gov)). Please include the name of the plat on the disc.

**NEIL STRAHL**, Planning Staff presented the staff report.

**DAVID MULLHAGEN, CLEAR CHANNEL OUTDOOR ADVERTISING, 3405 NORTH HYDRAULIC** said he was present to familiarize himself with what was going on in this neighborhood. He said he wanted to find out where the plat was going and how it was being set up. He said he will have further comments later on item #8, PUD2009-03.

**MOTION:** To approve subject to the recommendation of the Subdivision Committee and staff recommendation.

**MCKAY** moved, **HILLMAN** seconded the motion, and it carried (13-0).

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**4. PUBLIC HEARING – VACATION ITEMS**

**4-1. VAC2009-30: City request to vacate a portion of an easement dedicated by separate instrument.**

**OWNER/AGENT:** USD 265, Goddard PEC, c/o Rob Hartman

**LEGAL DESCRIPTION:** Vacate a portion of a waterline easement dedicated by separate instrument, Film 2904/Page 534, all located on Lot 1, Block 1, Goddard School 2<sup>nd</sup> Addition, Wichita, Sedgwick County, Kansas: see attached exhibits.

**LOCATION:** Generally located north of Kellogg Street/US-54, on the east side 167<sup>th</sup> Street West (WCC #V)

**REASON FOR REQUEST:** Redesigned school campus

**CURRENT ZONING:** The subject property and abutting northern, eastern and southern properties are zoned SF-5 Single-family Residential (“SF-5”). Abutting northern and eastern properties are zoned SF-20 Single-family Residential (“SF-20”). The City of Goddard is located west of the site, across 167<sup>th</sup> Street West.

The applicant proposes to vacate a portion of the described waterline easement. This easement (as well as multiple others) was the result of VAC2009-00003; approved by WCC April 7, 2009. There are no utilities in the described easement. The Goddard School 2<sup>nd</sup> Addition was recorded with the Register of Deeds September 26, 2008.

Based upon information available prior to the public hearing and reserving the right to make recommendations based on subsequent comments from City Public Works/Water & Sewer/Storm Water, franchised utility representatives and other interested parties, Planning Staff has listed the following considerations (but not limited to) associated with the request to vacate the described portion of a waterline easement dedicated by separate instrument.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time August 20, 2009, which was at least 20 days prior to this public hearing.
  2. That no private rights will be injured or endangered by the vacation of the described portion of the waterline easement dedicated by separate instrument and the public will suffer no loss or inconvenience thereby.
  3. In justice to the petitioner, the prayer of the petition ought to be granted.

Considerations (but not limited to) associated with the request to vacate the described portion of the waterline easement dedicated by separate instrument have been identified, therefore, the vacation of the portion of the waterline easement dedicated by separate instrument described in the petition should be approved with conditions:

- (1) Provide Planning staff with the legal description of each of the vacated easements and the vacated portion of the complete access control on a Word document, via e-mail, to be used on the Vacation Petition and the Vacation Order.
- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant.
- (3) All improvements shall be according to City Standards and at the applicants' expense.
- (4) Per MAPC Policy Statement #7, all conditions are to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

**SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Provide Planning staff with the legal description of each of the vacated easements and the vacated portion of the complete access control on a Word document, via e-mail, to be used on the Vacation Petition and the Vacation Order.
- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant.
- (3) All improvements shall be according to City Standards and at the applicants' expense.
- (4) Per MAPC Policy Statement #7, all conditions are to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

**MOTION:** To approve subject to the recommendation of the Subdivision Committee and staff recommendation.

**J. JOHNSON** moved, **HILLMAN** seconded the motion, and it carried (13-0).

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**4-2.    VAC2009-31: City request to vacate a platted setback**

**OWNER/APPLICANT:**       Todd L. & Tommie R. Chapman

**LEGAL DESCRIPTION:**     The south 18 feet of the platted 30-foot street side yard setback that runs parallel to the north lot line of Lot 6, Block 4, Northwest Gardens Addition and the south side of the 27<sup>th</sup> Street North right-of-way, Wichita, Sedgwick County, Kansas.

**LOCATION:**                 Generally located west of Amidon Avenue, on the southwest corner of Charles Avenue and 27<sup>th</sup> Street North (WCC #VI)



**REASON FOR REQUEST:** Build an attached garage

**CURRENT ZONING:** Subject property, abutting and adjacent northern, southern and western properties are zoned SF-5 Single-family Residential (“SF-5”). Adjacent eastern properties are zoned B Multifamily Residential (“B”) and MF-29 Multifamily Residential (“MF-29”).

The applicants propose to vacate the south 18 feet of the platted 30-foot street side yard setback on the SF-5 zoned corner lot, thus making a 12-foot street side yard setback. This setback runs parallel to the north lot line of Lot 6, Block 4, Northwest Gardens Addition and the south side of the 27<sup>th</sup> Street North right-of-way (ROW). The Unified Zoning Code (UZO) has a 15-foot minimum street side yard setback for the SF-5 zoning district. Per the UZO (Art.III, Sec.III-E, e (6)), the short side of a corner lot shall have the front yard setback. The short side of this lot is the Charles Avenue side. If this was not a platted setback, but the UZO’s 15-foot minimum street side yard setback for the SF-5 zoning district, the applicant could have applied for an Administrative Adjustment. The adjustment would reduce the UZO’s 15-foot minimum street side yard setback by 20%; resulting in a 12-foot setback, which is what the applicant is requesting. There are no platted easements within the platted setback. There are no utilities, manholes, sewer or water lines within the described portion of the platted setback. The Northwest Gardens Addition was recorded with the Register of Deeds June 12, 1950.

Based upon information available prior to the public hearing and reserving the right to make recommendations based on subsequent comments from City Public Works/Water & Sewer/Storm Water, franchised utility representatives and other interested parties, Planning Staff has listed the following considerations (but not limited to) associated with the request to vacate the described portion of platted street side yard setback.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time August 20, 2009, which was at least 20 days prior to this public hearing.
  2. That no private rights will be injured or endangered by the vacation of the described portion of the platted street side yard setback and the public will suffer no loss or inconvenience thereby.
  3. In justice to the petitioner, the prayer of the petition ought to be granted.

Considerations (but not limited to) associated with the request to vacate the described portion of the platted street side yard setback been identified, therefore, the vacation of the portion of the platted street side yard setback described in the petition should be approved with conditions:

- (1) Vacate the south 18 feet of the platted 30-foot setback that runs parallel to the north lot line of Lot 6, Block 4, Northwest Gardens Addition and the south side of the 27<sup>th</sup> Street North ROW. The approved legal description of the vacated portion of the platted setback, will only be where the proposed attached garage will be located, this will preserve the remaining platted 30-foot setback that runs parallel to the north lot line of Lot 6, Block 4, Northwest Gardens Addition and the south side of the 27<sup>th</sup> Street North right-of-way. Send the approved legal description to Planning on a Word document, via e-mail.
- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant.
- (3) All improvements shall be according to City Standards and at the applicant’s expense.

- (4) Per MAPC Policy Statement #7, all conditions shall be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

**SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Vacate the south 18 feet of the platted 30-foot setback that runs parallel to the north lot line of Lot 6, Block 4, Northwest Gardens Addition and the south side of the 27<sup>th</sup> Street North ROW. The approved legal description of the vacated portion of the platted setback, will only be where the proposed attached garage will be located, this will preserve the remaining platted 30-foot setback that runs parallel to the north lot line of Lot 6, Block 4, Northwest Gardens Addition and the south side of the 27<sup>th</sup> Street North right-of-way. Send the approved legal description to Planning on a Word document, via e-mail.
- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant.
- (3) All improvements shall be according to City Standards and at the applicant's expense.
- (4) Per MAPC Policy Statement #7, all conditions shall be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

**MOTION:** To approve subject to the recommendation of the Subdivision Committee and staff recommendation.

**J. JOHNSON** moved, **HILLMAN** seconded the motion, and it carried (13-0).

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**4-3. VAC2009-32: City request to vacate a portion of a platted easement**

**OWNER/AGENT:** Toby G, Harrison (owner) Savoy Company, PA, c/o Mark Savoy (agent)

**LEGAL DESCRIPTION:** The west 5 feet of the platted 20-foot utility easement located along the rear yard (east side) of Lot 7, Block 4, Remington Place Addition, Wichita, Sedgwick County, Kansas.

**LOCATION:** Generally located south of 21<sup>st</sup> Street North, midway between Webb and Greenwich Roads, on the east side of the Lindberg – Shadybrook Streets intersection. (WCC #II)

**REASON FOR REQUEST:** Build a swimming pool and remove existing encroachment

**CURRENT ZONING:** Subject property and all abutting properties are zoned SF-5 Single-family Residential ("SF-5").

The applicant is requesting consideration for the vacation of the described portion of the platted utility easement. The applicant proposes to build a swimming pool that will encroach approximately 5 feet into the subject platted easement. There is another 20-foot platted easement running parallel to this easement, located, east, on the abutting Oak Creek 2nd Addition. The GeoZone aerial shows a deck with a roof, which is attached to the house/principle structure, which is encroaching into the subject platted easement. The agent has confirmed the encroachment and the vacation will remove the existing encroachment. There are no manholes, sewer or water lines located in the described platted easement; they are located in ROW or in the 15-foot and 10-foot platted drainage and/or utility easements located in the front or interior side yards of the subject site. Westar has utilities in the described utility easement and the applicant will need to address potential drainage issues with Storm Water. The Remington Place Addition was recorded with the Register of Deeds May 9, 2001.

Based upon information available prior to the public hearing and reserving the right to make recommendations based on subsequent comments from City Public Works/Water & Sewer/Storm Water, franchised utility representatives and other interested parties, Planning Staff has listed the following considerations (but not limited to) associated with the request to vacate the described portion of the platted utility easement.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
  1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time August 20, 2009, which was at least 20 days prior to this public hearing.
  2. That no private rights will be injured or endangered by the vacation of the described portion of the platted utility easement and the public will suffer no loss or inconvenience thereby.
  3. In justice to the petitioner, the prayer of the petition ought to be granted.

Considerations (but not limited to) associated with the request to vacate the described portion of the platted utility easement have been identified, therefore, the vacation of the portion of the platted utility easement described in the petition should be approved with conditions:

- (1) Provide Planning staff with the legal description of the vacated portion of the platted utility easements on a Word document, via e-mail, to be used on the Vacation Petition and the Vacation Order. Westar has utilities in the described platted utility easement.
- (2) Preserve the existing tree line, located on the east side of the site.
- (3) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant.
- (4) Provide Westar with plans that confirm that the proposed swimming pool will be a minimum of 5 feet from Westar utilities located in the platted easement. Provide Westar and Storm Water with plans that confirm drainage, from the completed swimming pool will not be pooling in the easement, or into abutting properties.
- (5) All improvements shall be according to City Standards and at the applicants' expense.
- (6) Per MAPC Policy Statement #7, all conditions are to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required

documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

**SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Provide Planning staff with the legal description of the vacated easements on a Word document, via e-mail, to be used on the Vacation Petition and the Vacation Order. Westar has utilities in the described platted utility easement.
- (2) Preserve the existing tree line, located on the east side of the site.
- (3) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant.
- (4) Provide Westar with plans that confirm that the proposed swimming pool will be a minimum of 5 feet from Westar utilities located in the platted easement. Provide Westar and Storm Water with plans that confirm drainage, from the completed swimming pool will not be pooling in the easement, or into abutting properties.
- (5) All improvements shall be according to City Standards and at the applicants' expense.
- (6) Per MAPC Policy Statement #7, all conditions are to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

**MOTION:** To approve subject to the recommendation of the Subdivision Committee and staff recommendation.

**J. JOHNSON** moved, **HILLMAN** seconded the motion, and it carried (13-0).

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**4-4. VAC2009-33: City request to vacate a platted easement and an easement dedicated by separate instrument**

**OWNER/AGENT:** City of Wichita, c/o John Philbrick (owner) MKEC, c/o Greg Allison (agent)

**LEGAL DESCRIPTION:** A north portion of the platted 100-foot drainage easement, located on the south 100 feet of Lot 9 and the utility easement (Film/Page 28613635), dedicated by separate instrument, located along the east lot line of Lot 9, all in Block 1, Regency Park Addition, Wichita, Sedgwick County, Kansas; see exhibits.

**LOCATION:** Generally located northwest of Greenwich Road and K-96, on the south side of 26<sup>th</sup> Court North (WCC #II)

**REASON FOR REQUEST:** Relocate utilities to allow expansion of building

**CURRENT ZONING:** The subject property and all abutting and adjacent properties are zoned LI Limited Industrial ("LI").

The applicant proposes to vacate portions of the described easements. GeoZone shows a water line (north-south) in the utility easement dedicated by separate instrument. The applicant proposes to dedicate a temporary easement, effective until water and all other utilities are removed. GeoZone shows no manholes, sewer, or water lines in the described platted drainage easement. GeoZone shows a portion of the platted drainage easement to be in a FEMA flood zone, as confirmed by Storm Water. Westar has utilities located within the described platted drainage easement and the utility easement dedicated by separate instrument. The Regency Park Addition was recorded with the Register of Deeds February 9, 2000.

Based upon information available prior to the public hearing and reserving the right to make recommendations based on subsequent comments from City Public Works/Water & Sewer, franchised utility representatives and other interested parties, Planning Staff has listed the following considerations (but not limited to) associated with the request to vacate the described portions of the platted drainage easement and the utility easement dedicated by separate instrument.

A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:

1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time August 20, 2009, which was at least 20 days prior to this public hearing.
2. That no private rights will be injured or endangered by the vacation of the described portion of the platted drainage easement and the utility easement dedicated by separate instrument and the public will suffer no loss or inconvenience thereby.
3. In justice to the petitioner, the prayer of the petition ought to be granted.

Considerations (but not limited to) associated with the request to vacate the described portion of the platted easement and the easement dedicated by separate instrument have been identified, therefore, the vacation of the portion of the platted drainage easement and the utility easement dedicated by separate instrument described in the petition should be approved with conditions:

- (1) As needed, provide Staff with all required additional easement(s) (with original signatures) dedicated by separate instrument, as needed and approved by Public Works/Water and Sewer, Storm Water and all other utilities. Notify Planning when these easements have been approved by the franchise utilities. These easements will go with the Vacation Order to City Council for final action and recording with the Register of Deeds.
- (2) Provide Planning staff with the approved legal description of the vacated easement(s) on a Word document, via e-mail, to be used on the Vacation Petition and the Vacation Order.
- (3) Retain the south portion of the platted utility easement where Westar has utilities.
- (4) Relocation and reconstruction of water/utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant. As needed provide Public Works with any needed plans and guarantees for relocation of public utilities. As necessary provide franchised utilities with any needed plans for review for location of utilities and retain the easement(s) until utilities are relocated.

- (5) All improvements shall be according to City Standards and at the applicants' expense. Provide Public Works with the needed guarantee(s) for relocation and reconstruction of water/utilities made necessary by this vacation.
- (6) Per MAPC Policy Statement #7, all conditions are to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

**SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval subject to the following conditions:

- (1) As needed, provide Staff with all required additional easement(s) (with original signatures) dedicated by separate instrument, as needed and approved by Public Works/Water and Sewer, Storm Water and all other utilities. Notify Planning when these easements have been approved by the franchise utilities. These easements will go with the Vacation Order to City Council for final action and recording with the Register of Deeds.
- (2) Provide Planning staff with the approved legal description of the vacated easement(s) on a Word document, via e-mail, to be used on the Vacation Petition and the Vacation Order.
- (3) Retain the south portion of the platted utility easement where Westar has utilities.
- (4) Relocation and reconstruction of water/utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant. As needed provide Public Works with any needed plans and guarantees for relocation of public utilities. As necessary provide franchised utilities with any needed plans for review for location of utilities and retain the easement(s) until utilities are relocated.
- (5) All improvements shall be according to City Standards and at the applicants' expense. Provide Public Works with the needed guarantee(s) for relocation and reconstruction of water/utilities made necessary by this vacation.
- (6) Per MAPC Policy Statement #7, all conditions are to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

**MOTION:** To approve subject to the recommendation of the Subdivision Committee and staff recommendation.

**J. JOHNSON** moved, **HILLMAN** seconded the motion, and it carried (13-0).

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**PUBLIC HEARINGS**

5. **Case No.: ZON2009-26** - Norman Hardin requests a City zone change from SF-5 Single-family Residential to LC Limited Commercial on property described as:

Lot 14 except the North 5 feet for road, Urbandale First Addition to Wichita, Sedgwick County,

Kansas; generally located east of Seneca Street on the south side of 53rd Street North.

**BACKGROUND:** The applicant requests a zone change from SF-5 Single-family Residential (“SF-5”) to LC Limited Commercial (“LC”), on Lot 14, First Addition to Urbandale. The approximately 1-acre site (142.1 feet {x} 306.5 feet) is located approximately 280 feet east of Seneca Street, on the south side of 53<sup>rd</sup> Street North. The site currently has a vacant, single-family residence (built 1925) and several out buildings including a large building located in front of the single-family residence. This large building in front appears to be out of compliance with current setback standards. According to the current owner, past uses include a scrap metal dealer/yard (from at least 1997 - 2008, as shown on an aerials of the area), an exotic fish supplier for retailers, until 1992 a welding business and before that a grocery store. The site has also been used as single-family residential (including at one point by the current owner) throughout its life. The site has a mostly metal fence around it, which does meet the current Unified Zoning Code’s (UZY) screening standards. Access to the site is off of 53<sup>rd</sup>, a paved, two lane arterial. The proposed LC zoning would allow some uses that have been on the site in the past.

The surrounding area is characterized by a mix of uses including: mostly single-family residences, auto repair, strip retail, vacant school, church, steel fabrication, and office - warehouse. The properties to the south of the subject site are zoned SF-5, and are developed as large lot single-family residential. Properties abutting and adjacent to the west side of the site are zoned LC and are developed as auto repair and a retail strip. Properties abutting and adjacent to the east side of the site are zoned GC General Commercial (“GC”) and SF-5. The GC site is a single-family residence. Staff could not find a zoning case on the GC site, but it is one of several GC zoned lots in the area that has 50-60 feet of half-street right-of-way (ROW) on their 53<sup>rd</sup> frontage, which indicates past zoning cases. The other properties east of the site are zoned SF and developed as large lot single-family residences. All of these abutting and adjacent eastern, western and southern properties are part of the same subdivision as the site, the First Addition to Urbandale, recorded in 1911. North of the site, across 53<sup>rd</sup>, are LC zoned auto repair and office – warehouse, GC zoned steel fabrication and manufacturing and SF-5 zoned single-family residences and a church.

To buffer the abutting and adjacent existing single-family residences from the commercial redevelopment on the site, Staff has proposed a Protective Overlay (PO). The proposed PO limits signage, lighting, noise, building height and notes current development standards for the LC zoning district. The proposed PO also prohibits certain uses that are less compatible with the predominant single-family residential development.

**CASE HISTORY:** The subject property is Lot 14, First Addition to Urbandale, which was recorded May 15, 1911. A single-family residence was built on the lot in 1925. The area was annexed into the City in 1997.

**ADJACENT ZONING AND LAND USE:**

NORTH:	SF-5, GC, LC	Single family residences, church, steel fabrication, warehouse-office, manufacturing, auto repair
SOUTH:	SF-5	Single family residences
EAST:	GC, SF-5	Single-family residences
WEST:	LC	auto repair, retail strip, vacant school

**PUBLIC SERVICES:** The subject site has frontage/access to 53<sup>rd</sup> Street North and is approximately 280 feet east of Seneca Street. 53<sup>rd</sup> is a paved, curbed two-lane minor arterial. Seneca Street is a paved, two-lane, urban collector. The 2030 Transportation Plan indicates no change to the status of Seneca, but 53<sup>rd</sup> is shown to become a four-lane arterial. There are no available traffic counts in the area. There is only 35 feet of half-street ROW along the site’s 53<sup>rd</sup> Street frontage, current standards are 60 feet. The block of 53<sup>rd</sup> Street between Armstrong Avenue and Seneca, where the site is located, has ½-street ROW ranging from 30 feet to 60 feet. Municipal water is available to the subject site. The nearest sewer service is located over ½-mile from the site, at Delaware and 51<sup>st</sup> Street North, on the Camp Hiawatha Addition. To

extend service to the area where the site is located, the Little Arkansas River would have to be crossed; the site is located in a large area with no municipal sewer service. Sewer is projected to be extended to the area, at the earliest, by 2012, but it could be later.

**CONFORMANCE TO PLANS/POLICIES:** The *2030 Wichita Functional Land Use Guide of the Comprehensive Plan* identifies the area as appropriate for “Local Commercial” development. The “Local Commercial” category includes commercial, office and personal service uses that do not have a regional draw. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The site has direct access onto 53<sup>rd</sup> Street, which is a paved, two-lane arterial, which the *2030 Transportation Plan* projects to become a four-lane arterial. The proposed PO addresses site design features and prohibits certain uses that are less compatible with the predominant single-family residential development of the area. The site will have to get in compliance with the current standards for solid screening, landscaping and paving. Lack of municipal sewer will limit redevelopment of the site.

**RECOMMENDATION:** The requested LC zoning does conform to the *2030 Wichita Functional Land Use Guide of the Comprehensive Plan*. The 1-acre site seems to have been used for mostly non residential uses from before County zoning in 1984, up to its annexation into the City in 1997 and to last year. The proposed LC zoning would allow redevelopment of the site for primarily retail commercial uses or for residential uses, which are permitted by right in the LC zoning district. The lack of municipal sewer will limit redevelopment of the site. If approved, the proposed zoning change would mean that the subject site would have to come into compliance with current development standards, which includes paved parking, landscaping and screening. Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following provisions of a Protective Overlay:

- A. No off-site or portable signs shall be permitted on the subject property. No building signs shall be permitted along the south or face of any building that is adjacent to any property that is zoned residential.
- B. Signs shall be in accordance with the City of Wichita sign code, with the exception that signs shall be monument-style and limited to 15 feet in height.
- C. Light poles shall be of the same color and design and shall have cut-off fixtures which direct light away from any abutting or adjacent properties that are in a residential zoning district. Light poles shall be limited to a maximum height, including the base of the light pole, of 15 feet. Light poles shall not be located within any setbacks.
- D. Outdoor speakers and sound amplification systems shall not be permitted.
- E. No buildings shall exceed one story in height with a maximum building height of 35 feet.
- F. At the time the site is redeveloped the owner shall install and/or maintain a 6-8-foot high cedar fence located parallel to the south property line of the subject site, where it abuts existing residential zoning. The metal fence currently up will come down.
- G. At the time the site is redeveloped landscaping shall be installed that meets the Landscape Ordinance.
- H. All driveways, parking, loading and vehicle circulation shall be paved with concrete, asphalt or asphaltic concrete.
- I. More extensive development or redevelopment of the site, beyond its current buildings, is contingent on the extension of public sewer service to the site.
- J. Contingent dedication of 25 feet of right-of-way prior to the publication of the ordinance implementing the zone change.
- K. The following uses shall not be permitted: adult entertainment establishment; correctional placement residence; recycling collection station; reverse vending machine; car wash; convenience store; night club in the city; recreation and entertainment, outdoor; tavern and drinking establishment; hotel – motel; pawnshop; an asphalt – concrete plant.



This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is characterized by a mix of uses, including: mostly single-family residences, auto repair, strip retail, vacant school, church, steel fabrication and office - warehouse. The properties to the south of the subject site are zoned SF-5, and are developed as large lot single-family residential. Properties abutting and adjacent to the west side of the site are zoned LC, and are developed as auto repair and strip retail. Properties abutting and adjacent to the east side of the site are zoned GC General Commercial ("GC") and SF-5. The GC site is a single-family residence. Staff could not find a zoning case on the GC site, but it is one of several GC zoned lots in the area that has 50-60 feet of half-street right-of-way (ROW) on their 53<sup>rd</sup> Street frontage, which indicates past zoning cases. The other properties east of the site are zoned SF, and are developed as large lot single-family residences. All of these abutting and adjacent eastern, western and southern properties are part of the same subdivision as the site, the First Addition to Urbandale, recorded in 1911. North of the site, across 53<sup>rd</sup> Street, are LC zoned auto repair and office – warehouse, GC zoned steel fabrication and manufacturing and SF-5 zoned single-family residences and a church.
2. The suitability of the subject property for the uses to which it has been restricted: The large subject lot is zoned SF-5 which accommodates single-family residential development and complementary land uses. The site could be used (and has in the past) for a single-family residence, which is how most of the area's large lots have been developed. The 1-acre lot is large enough for commercial use, and in the past it seems to have been used for a number of non-residential uses: a scrap metal dealer/yard (from 1997 to 2008, as shown on aerials of the area), an exotic fish supplier for retailers, a welding business and a grocery store. Lack of municipal sewer limits more intensive redevelopment opportunities.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Detrimental effects should be minimized by the provisions of the proposed Protective Overlay which would: limit signage, lighting, noise, building height and prohibit certain uses that are less compatible with surrounding residential development.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies the subject property as appropriate for "Local Commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The site is located on 53<sup>rd</sup> Street North, an arterial road and it has immediate access to it. The proposed PO addresses these considerations.
5. Impact of the proposed development on community facilities: The site has no sewer services available to it, which limits redevelopment of the site. The rezoning will add additional ROW along the site's 53<sup>rd</sup> Street frontage, which will be needed for future expansion of 53<sup>rd</sup>.

**BILL LONGNECKER**, Planning Staff presented the staff report.

**MOTION:** To approve subject to staff recommendation.

**B. JOHNSON** moved, **HENTZEN** seconded the motion, and it carried (13-0).

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6. Case No.: ZON2009-27 and CUP2009-26 - Tam Thanh Nguyen, Rottinghous Real Estate, LLC, Junior R. and Ola J. Silvers, AutoZone Inc., Conway Bank NA, (owners); Baughman Company, PA. c/o Russ Ewy (agent) Request City zone change from SF-5 Single-family

Residential to LC Limited Commercial and Creation of DP-321 Harry and Webb Commercial Community Unit Plan on property described as:

That part of the NW ¼ of Sec. 33, Twp. 27-S, R-2-E of the 6th P.M., Sedgwick County, Kansas described as follows: Beginning at the NW corner of Lot 1, Block 1, Nguyen Addition, an addition to Sedgwick County, Kansas; thence N88°52'03"E (calculated per platted information), N88°52'31"E (measured), along the north line of Lot 1, Block 1, in said Nguyen Addition, 239.89 feet (platted), 239.85 feet (measured), to the NE corner of Lot 1, Block 1, in said Nguyen Addition, said NE corner also being the SW corner of a street dedication recorded in Film 100, Page 459; thence N88°52'03"E (calculated per description in Film 100, Page 459), N88°52'31"E (measured), along the south line of said street dedication (Film 100, Page 459), 20.00 feet (described in Film 100, Page 459), 20.01 feet (measured), to the SE corner of said street dedication (Film 100, Page 459), said SE corner also being a point on the east line of a tract of land described in Deed Book 1527, Page 382; thence S00°56'18"E (calculated per description in Deed Book 1527, Page 382), S00°54'10"E (measured), along the east line of said tract of land (Deed Book 1527, Page 382), 936.15 feet (calculated per description in Deed Book 1527, Page 382), 936.18 feet (measured), to the SE corner of said tract of land (Deed Book 1527, Page 382); thence S88°53'13"W (calculated per description in Deed Book 1527, Page 382), S88°50'44"W (measured) along the south line of said tract of land, 441.6 feet (described in Deed Book 1527, Page 382), 441.31 feet (measured), to the SW corner of said tract of land, (Deed Book 1527, Page 382); thence N00°56'18"W (calculated per description in Deed Book 1527, Page 382), N00°56'14"W (measured), along the west line of said tract of land (Deed Book 1527, Page 382), 247.71 feet (calculated per described information), 248.01 feet (measured), to the SE corner of Lot 1, Block 1, Subway Addition to Wichita, Sedgwick County, Kansas; thence S88°52'34"W (calculated per platted information), S88°52'33"W (measured), along the south line of said Lot 1, 381.66 feet (platted), 381.84 feet (measured), to the SW corner of said Lot 1; thence N00°56'18"W (calculated per platted information), N00°55'19"W (measured), along the west line of said Lot 1, 60.00 feet; thence N88°52'34"E (calculated per platted information), N88°52'33"E (calculated per measured information), parallel with the south line of said Lot 1, 75.50 feet; thence S46°07'27"E (calculated per measured information), 14.14 feet (calculated per measured information), to a point 50.00 feet normally distant north of the south line of said Lot 1; thence N88°52'34"E (calculated per platted information), N88°52'33"E (calculated per measured information), parallel with the south line of said Lot 1, 171.14 feet (calculated per platted information), 171.35 feet (calculated per measured information), to a point 125.00 feet (calculated per platted information), 124.93 feet (calculated per measured information), normally distant west of the east line of said Lot 1; thence N00°55'27"W (calculated per platted information), N00°56'43"W (calculated per measured information), parallel with the east line of said Lot 1, 200.37 feet (calculated per platted information), 200.36 feet (calculated per measured information) to a non-platted deflection corner in the north line of said Lot 1, said non-platted deflection corner being 125.00 feet (calculated per platted information), 124.93 feet (measured), west of the NE corner of said Lot 1, said non-platted deflection corner also being on the westerly portion of the south line of Lot 3 in Webb Road Addition, Sedgwick County, Kansas; thence S88°51'37"W (calculated per platted information from said Subway Addition), S88°52'03"W (calculated per platted information from said Webb Road Addition), S80°50'25"W (measured) along the line common to Lot 3, Block 1, in said Webb Road Addition and Lot 1, Block 1, in said Subway Addition, 41.72 feet (calculated per platted information), 41.80 feet (measured) to the SW corner of Lot 3, Block 1, in said Webb Road Addition; thence N00°56'18"W (calculated per platted information), N00°56'34"W (calculated per measured information), along the west line of said Lot 3, 197.93 feet (calculated per platted information), 198.03 feet (calculated per measured information), to a point 228.75 feet (calculated per platted information), 228.66 feet (calculated per measured information), south of the NW corner of said Lot 3; thence N88°52'03"E (calculated per platted information), N88°53'56"E (calculated per measured information), 348.67 feet (calculated per platted information), 348.61 feet (calculated per measured information), to a point on the east line of said Lot 3, said point being 240.00 feet (calculated per platted

information), 240.18 feet (calculated per measured information), south of the NE corner of said Lot 3, said point also being on the west line of Lot 1, Block 1, in said Nguyen Addition; thence N00°53'14"W (calculated per platted information from said Nguyen Addition), N00°56'18"W (calculated per platted information from said Webb Road Addition), N00°53'31"W (measured), along the west line of Lot 1, Block 1, in said Nguyen Addition, 240.00 feet (calculated per platted information), 240.18 feet (calculated per measured information), to the point of beginning; generally located south of Harry Street and east of Webb Road.

**BACKGROUND:** The applicant proposes to create DP-321 Harry and Webb Commercial Community Unit Plan ("CUP") south of Harry Street and east of Webb Road. The CUP would be zoned LC Limited Commercial ("LC") and would consist of a single lot with a skinny strip of access to Webb Road and a limited amount of frontage on Harry Street, but ballooning out to a 10.00-acre single parcel located south and east of the strip of commercial uses already in place directly fronting these arterial street. Total size of the CUP is 10.33 acres. CUP2009-00026 is accompanied by ZON2009-00027, which is a rezoning of approximately four acres on the southeast portion of the proposed CUP. Currently, this property is zoned SF-5 Single-Family Residential ("SF-5").

The LC zoning on the CUP consists of a portion of the LC commercial corner zoned in 1958. Additional commercial zoning was added along Webb Road in 2002 (ZON2002-00005) and 2.4 acres along Harry Street in 2005 (ZON2005-00017).

Uses permitted would be those allowed by right in the LC district except: adult entertainment, sexually oriented business, correctional placement residences, night club, and tavern and drinking establishment. Activities prohibited within 200 feet of residential uses include: drive-through windows, convenience stores, service stations and vehicle repair, limited. Additional restrictions are to prevent headlights associated with queuing lanes from shining into residential zoning, overhead doors associated with vehicle repair would be prohibited within 200 feet of residential uses and not be allowed to face residential zoning districts and noise is restricted.

CUP provisions include maximum building coverage of 30 percent, maximum floor area of 35 percent of lot area, maximum height of 35 feet. Number of buildings specified is two. Setbacks are 100 feet on the south property line, and 35 feet along the north, west and east property line.

Consistency is called for in architecture, lighting standards of 25 feet for most of the parcel, but reduced to 15 feet within 200 feet of the south property line. It also calls for consistency in signage and landscaping. It provides for pedestrian connectivity between buildings and the main roads and internal circulation and smooth vehicular flow within the parcel. A screening wall of six to eight feet in height is required abutting residential zoning.

The signage provisions for freestanding signage stipulate one monument-style sign 24 feet in height for each frontage, with a size of 160 square feet each. The frontage on Webb Road is only 60 feet, which by the Wichita Sign Code would be entitled to a sign limited to 48 square feet in size. Harry Street would be entitled to a sign limited to 208 square feet. Combined, the amount allotted to both streets would be 256 square feet, which is below the 320 square feet requested. The Wichita Sign Code does not provide for increasing the total amount of signage or redistributing the allotment among the two CUP frontages. Signage is not specifically named as a requirement eligible for waiver by the Unified Zoning Code in Article III, Section III-C.2.d although sign control is listed as one of the purposes of the CUP in Article III, Section III-C.2.a. If the governing body approves the sign amount as requested, it constitutes an override of Wichita Sign Code by the Unified Zoning Code under the authority for waivers, and the grounds for this waiver is when the governing body determines the waiver constitutes good planning practice and furthers the objectives of the Comprehensive Plan. In terms of current conditions, Webb Road already has three signs along the stretch between the CUP and the intersection (Subway approximately 100 feet to the north, then Taco Shop, then QuikTrip all within 350 feet). The vacant parcel, which lies outside the CUP although the strip of access in the CUP is carved from this parcel)

would add another sign, allowing three signs within 100 feet which is beyond the desired spacing.

Other sign provisions include prohibiting portable, billboard and off-site signs, limiting window signage to 25 percent of window area, prohibiting building signs on the south façade and limiting flashing signs to those for public service type messages.

A convenience store is located at the southeast corner of the intersection of Webb Road and Harry Street. Other commercial uses along the south side of Harry Street east of Webb Road include a car wash and a tire, battery and accessory store. Other commercial uses along the east side of Webb Road south of Harry include two fast food restaurants and a vacant retail tract. All of these uses are located on property zoned LC and all adjoin the proposed CUP on its interior northern and western boundary line. The tract of land east of the proposed CUP is zoned GC General Commercial ("GC"), GO General Office ("GO") and TF-3 Two-Family Residential ("TF-3") and SF-5. A church owns this site and has a building along Harry; much of the site is vacant. It used to be a nursery business. The residential subdivision located east of the church is zoned SF-5. The property south of the proposed CUP is developed with the Brentwood residential development and is zoned SF-5. The CUP shares a common property line with the northern edge of this development. A large-lot single-family home and a church are located to the southwest of the CUP. A mini-storage warehouse, an office complex and a condominium zoned MF-18 Multi-Family Residential ("MF-18") are developed to the north of the CUP. In the vicinity of the intersection of Harry and Webb, all four corners are developed commercially, with a bank, and two strip commercial buildings to the northeast, a Dillons to the northwest, and a Walgreens and fast food restaurant, a residence and a vacant tract to the southwest. A large lot residence and a vacant tract remain farther south on the west side of Webb across from the CUP entrance. North of the CUP frontage on Harry Street are located a freestanding restaurant, a mini-storage warehouse, a cluster of office buildings and a condominium development with about 16 dwelling units zoned MF-18 Multi-Family Residential ("MF-18").

**CASE HISTORY:** The SF-5 property and approximately ¼ acre of LC property is un-platted. The remaining land is covered by three subdivision plats, including, Webb Road Addition, recorded October 2, 1974, Subway Addition, recorded May 8, 2003 and Nguyen Addition, recorded October 9, 2007.

**ADJACENT ZONING AND LAND USE:**

NORTH:	LC, GO, MF-18	Warehouse, self-service storage, offices, condominiums, restaurant
EAST:	GC, SF-5, GO, TF-3, SF-5	Church, vacant land owned by church, single-family residential
SOUTH:	SF-5	Single-family residential, church
WEST:	LC, GO, SF-5	Retail, grocery, drug store, commercial strip centers, bank, fast-food restaurants, vacant, residence

**PUBLIC SERVICES:** Webb Road is a four-lane arterial with no accel/decel lane or center turn lane at the entrance of the CUP onto Webb. Harry Street also is a four-lane arterial with no accel/decel lane abutting the CUP. The taper for a center turn lane begins on the east edge of the CUP and is functional on its western edge. At the intersection of Webb and Harry arterial streets are expanded to provide at least two through lanes in each direction, corner accel/decel lanes and center turn lanes with raised medians. Traffic volumes at the intersection in 2007 were 18,332 AADT (annual average daily traffic) for southbound Webb, 17,800 for eastbound and 17,130 for westbound Harry Street and 14,344 for northbound Webb.

Normal public services are available.

**CONFORMANCE TO PLANS/POLICIES:** The "2030 Wichita Functional Land Use Guide, Map as amended May 2005" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for "Local Commercial." The proposed development would be in conformance to the local commercial designation. It has aspects both in conformance and in conflict with **Commercial**

**Goal/Objective B** of “Develop future retail/commercial areas which complement existing commercial activities; provide convenient access to the public and minimize detrimental impacts to other adjacent land uses.” The CUP has requirements designed to minimize the impact of the development on the residences to the south. The proposed use conforms to **Strategy III.B.1** of locating local commercial development (neighborhood centers) in areas shown on the Land Use Guide at the intersection of two arterial streets and **Commercial Locational Guideline #1** of the *Comprehensive Plan* recommends that commercial sites should be located adjacent to arterial streets. Because outparcels on Harry and Webb already have been developed or platted and are not part of the CUP, the proposed CUP does not have shared signage with these outparcels as recommended by **Strategy III.B.2**. The proposed use derived all its direct access from one point on each street frontage, in support of **Strategy III.B.3**, to limit the number of access points along arterial streets.

**RECOMMENDATION:** The main concerns with the proposed CUP is providing a good buffer and separation of use for the residential property to the south, defining the appropriate access and traffic improvements and the appropriate amount of signage on Webb Road. It is recommended that the total amount of signage be reduced on Webb Road to 96 square feet. This still doubles the 48 square feet allowance per Wichita Sign Code but folds in the unused frontage allowance on Harry Street. Other factors supporting this reduction is the potential for another sign very close on the undeveloped portion of Subway Addition, compounded by the fact that the 60-foot frontage on Webb actually is a transfer of the frontage from Subway Addition and without that transfer, only one rather than two signs would have been permitted. The CUP includes some use and site restrictions to lessen the impact of the development on the residential property to the south. Based on these factors, plus the information available prior to the public hearing, staff recommends the request be APPROVED subject to platting within one year and subject the following conditions:

- A. APPROVE the zone change (ZON2009-00027) to LC.
- B. APPROVE the Community Unit Plan (DP-321), subject to the following conditions:
  - 1. The applicant shall provide guarantee for left turn lane from the current five-lane section to the entrance on Webb Road.
  - 2. Access location on Harry Street shall be located midpoint between entrances on adjoining properties.
  - 3. The sign face area on Webb Road shall be reduced to 96 square feet.
  - 4. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
  - 5. The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.
  - 6. The ordinance/resolution establishing the zone change shall not be published until the platting has been recorded with the Register of Deeds.
  - 7. Prior to publishing the ordinance/resolution establishing the zone change, the applicant(s) shall record a document with the Register of Deeds indicating that this tract (referenced as DP-321) includes special conditions for development on this property.
  - 8. The applicant shall submit four revised copies of the CUP to the Metropolitan Area Planning Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

- 1. The zoning, uses and character of the neighborhood: A convenience store is located at the southeast corner of the intersection of Webb Road and Harry Street. Other commercial uses along the south side of Harry Street east of Webb Road include a car wash and a tire, battery and accessory store. Other commercial uses along the east side of Webb Road south of Harry include

two fast food restaurants and a vacant retail tract. All of these uses are located on property zoned LC and all adjoin the proposed CUP on its interior northern and western boundary line. The tract of land east of the proposed CUP is zoned GC General Commercial ("GC"), GO General Office ("GO") and TF-3 Two-Family Residential ("TF-3") and SF-5. A church owns this site and has a building along Harry; much of the site is vacant. It used to be a nursery business. The residential subdivision located east of the church is zoned SF-5. The property south of the proposed CUP is developed with the Brentwood residential development and is zoned SF-5. The CUP shares a common property line with the northern edge of this development. A large-lot single-family home and a church are located to the southwest of the CUP. A mini-storage warehouse, an office complex and a condominium zoned MF-18 Multi-Family Residential ("MF-18") are developed to the north of the CUP. In the vicinity of the intersection of Harry and Webb, all four corners are developed commercially, with a bank, and two strip commercial buildings to the northeast, a Dillons to the northwest, and a Walgreens and fast food restaurant, a residence and a vacant tract to the southwest. A large lot residence and a vacant tract remain farther south on the west side of Webb across from the CUP entrance. North of the CUP frontage on Harry Street are located a freestanding restaurant, a mini-storage warehouse, a cluster of office buildings and a condominium development with about 16 dwelling units zoned MF-18 Multi-Family Residential ("MF-18").

2. The suitability of the subject property for the uses to which it has been restricted: The LC zoned part of the tract is suitable for commercial uses and the residual property is somewhat land-locked and difficult to use. The CUP utilizes the bulk of the site as a single mid-sized establishment.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The most significant effects would be on the residential to the south, but the CUP includes provisions to mitigate the level of impact. The church to east also will be impacted, especially on the northern edge. Since the church is located on GC zoned property, the normal buffer/screening provisions are not applied to this common property line. The other potential effects are for too much signage in a short distance on Webb and the increase in traffic.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The "2030 Wichita Functional Land Use Guide, Map as amended May 2005" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for "Local Commercial." The proposed development would be in conformance to the local commercial designation. It has aspects both in conformance and in conflict with **Commercial Goal/Objective B** of "Develop future retail/commercial areas which complement existing commercial activities; provide convenient access to the public and minimize detrimental impacts to other adjacent land uses." The CUP has requirements designed to minimize the impact of the development on the residences to the south. The proposed use conforms to **Strategy III.B.1** of locating local commercial development (neighborhood centers) in areas shown on the Land Use Guide at the intersection of two arterial streets and **Commercial Locational Guideline #1** of the *Comprehensive Plan* recommends that commercial sites should be located adjacent to arterial streets. Because outparcels on Harry and Webb already have been developed or platted and are not part of the CUP, the proposed CUP does not have shared signage with these outparcels as recommended by **Strategy III.B.2**. The proposed use derived all its direct access from one point on each street frontage, in support of **Strategy III.B.3**, to limit the number of access points along arterial streets.
5. Impact of the proposed development on community facilities: The greatest impact will be on increased traffic on Webb Road and Harry Street. Neither street has turn lanes to handle the queuing of turns onto the property.

MCKAY recused himself from this item.

**DALE MILLER**, Planning Staff presented the staff report.

**FOSTER** asked about the possibility of providing pedestrian and bicycle access through the wall to the east and south of the site from the residential area.

**MILLER** said staff and the applicant are fine with that suggestion. He said he had two other points he wanted to mention before he answered other questions regarding the application. He said in reference to Condition #1, the applicant has provided a traffic study which is currently being reviewed by Traffic Engineering and that Traffic Engineering has requested that item #1 be deleted from the conditions and worked out at the time of platting. He said Planning staff and the applicant are okay with that request. He said in reference to Condition #3 about reducing the sign area facing Webb Road to 96 square feet, the applicant has requested 160 square feet and staff is comfortable with that. He said with those two changes, and the access requested by **FOSTER**, Planning Staff would like to recommend approval of the application.

**MITCHELL** asked how the access opening would be handled at the southeast corner.

**MILLER** said it is a dead end street and doesn't go into a parking area but that will be worked that out at the platting stage.

**FOSTER** clarified that it was not his intention to allow vehicular access.

**MILLER** said if it is platted as a parking lot, it might make sense for vehicular traffic.

**VAN FLEET** asked if anyone from the public was present to speak on this item and no one responded.

**MOTION:** To approve subject to staff recommendation with the changes incorporated at today's meeting.

**B. JOHNSON** moved, **DOWNING** seconded the motion, and it carried (13-0).

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7. **Case No.: CON2009-21** - Daniel & Deborah McClure (owners) Fremar Corporation, c/o Pat Lemmons (agent) request a City Conditional Use to remove dirt and pump sand in order to create a farm pond for personal use on property described as:

Starting at a point 60 feet north of the south line of the E1/2, NE 1/4, NW 1/4, S30-T28-R1E, the south 396 feet is the area to be considered for the conditional use permit.

The East half of the Northeast Quarter of the Northwest Quarter, except the North 305 feet, of Section 30, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; generally located approximately 1/4 mile east of Meridian Avenue on the south side of 55th Street South.

**BACKGROUND:** The applicant/owners propose to extract soil and sand from the SF-5 Single-family Residential ("SF-5") zoned, 15.47-acre, unplatted site. The proposed activities are classified by the Unified Zoning Code (UZC) as "Mining or Quarrying" and are permitted in the SF-5 zoning district with an approved Conditional Use. The UZC considers Mining or Quarrying an industrial use. The site is currently a field, located immediately south of the owners' SF-5 zoned single-family residence and three (3) other, SF-5 zoned single-family residences; Slades 1<sup>st</sup> Subdivision Addition. These four single-family residences separate the site from 55<sup>th</sup> Street South, by approximately 255 feet. As shown on the site plan, the site is currently fenced with barbed wire on the west, south and east sides and a combination of chain link and barbed wire on its north side; the fencing does not meet the standards for "mining or quarrying"

of the UZC's Supplementary Use Regulations found in the Article III, Section III-D.6.gg. At the end of the soil and sand extraction the owners will have an approximately 4-acre, 25-foot deep pond, to be used as an amenity to their single-family residence.

The site plan shows two operational phases at the site. Phase I will be the excavation of soil, running from the middle of October to the middle of December. This excavation of soil could generate as many as 20 truck trips per day, Monday – Friday, 7 AM – 5 PM. The soil will be used for the bridge work over the “Big Ditch” at Hydraulic Avenue and 71<sup>st</sup> Street South; KDOT project 87C4343-01. Phase II will be the pumping and removal of sand from the site. The sand will be used only for Fremar (applicant) projects. The pumps will operate 3 days a week, 7 AM – 5 PM. Removal of the sand will be as needed by Fremar's projects, Monday – Friday, 7 AM – 5 PM. The amount of truck trips generated depends on the projects, but could be less than 20 trips per day. Total time requested for all phases is 4 years. The relative small size to be excavated, 4-acres, 25 feet deep, coupled with the requested 4 years to do it and having only one user, could mean less truck traffic per day generated off the site during Phase II of operations. When operations end, there will be a 4-acre pond (386 feet {x} 513 feet), 25 feet deep, to be used by the owners' existing single-family residence. The finished pond will be located 65 feet from the abutting southern property and 72 feet from the abutting western and eastern properties. The site has one access point, a shared, gravel drive onto 55<sup>th</sup> Street South.

Properties abutting the west, south and east sides of the site are zoned SF-20 Single-family Residential (“SF-20”) and SF-5. These properties are agricultural fields and a farm house, built in 1920. As noted there are four, SF-5, single-family residences (built 1945 - 1981) abutting the north side of the site; Staff has not received calls or input from these neighbors. North of these residences, across 55<sup>th</sup> Street South, is Campus High School and Ruth Clark Elementary School; USD 261. Merging of traffic generated by the schools and truck traffic on and off of the site is a consideration. Staff and the applicants/owners have spoken with the principals of both schools and the superintendent/members of the Haysville School District, USD 261, in regards to traffic and other considerations. The City of Wichita's South Lakes Park is also located in the immediate area, on the north side of 55<sup>th</sup> and around the north and east sides of the USD 261 schools, over to Meridian Avenue.

**CASE HISTORY:** The site was annexed into the City of Wichita between 1991 and 2000. The site's zoning was probably established in 1985 with the adoption of a county-wide zoning code and subsequently changed to SF-5 upon annexation.

**ADJACENT ZONING AND LAND USE:**

NORTH:	SF-5,	Haysville Single-family residences, Campus High School, Ruth Clark Elementary School, park land
SOUTH:	SF-20, SF-5	Agricultural fields
EAST:	SF-5	Farm, Agricultural fields
WEST:	SF-20	Agricultural fields

**PUBLIC SERVICES:** All utilities are available, including municipally supplied sewer and water. Both 55<sup>th</sup> Street South and Meridian Avenue are paved two-lane County Highways/arterials at this location. 55<sup>th</sup> is projected to remain a two-lane arterial, while Meridian is projected to be a four-lane arterial. Average trips per along this portion of 55<sup>th</sup> are approximately 4,089. The 55<sup>th</sup> and Meridian intersection's average trips per day are approximately 7,277 – 4,089. There 8 drives off of the two USD 261 schools onto 55<sup>th</sup>, with the applicants' drive located between the two most eastern drives of the elementary school. 55<sup>th</sup> currently has 50 feet of half-street right-of-way.

**CONFORMANCE TO PLANS/POLICIES:** The site is on the east edge of rural, west Sedgwick County. The 2030 Wichita Functional Land Use Guide shows this area located inside of Wichita's 2030 Urban Growth Area and categorized as “Urban Development Mix.” This category encompasses land that is likely to be developed by the year 2030. Uses within this category include all types of residential, institutional, commercial, parks, and employment/industrial uses; this category is market driven, with a



broad range of development possibilities. Soil and sand extraction is a use dependent on a natural resource; there are several older, finished sand pits in the area. The Wichita/Sedgwick County Comprehensive Plan's Locational Criteria indicates that industrial uses should be located with good access to major arterials, truck routes, belt highways, utility truck lines, rail spurs, and airports. The site has access to 55<sup>th</sup> Street South, an arterial. It is advisable not to locate a sand pit close to an airport, because of the number of birds they can attract and the potential hazard/conflict of birds and planes. An industrial use should not feed directly into local streets in residential areas. This site does not access a local street, but it will use a shared private drive that the owner and a neighbor use; Staff has not received calls from that neighbor. An industrial use should be located away from existing or planned residential areas and sited so as not to generate industrial traffic through less intensive land uses areas. The area has a mix of institutional, agricultural, urban and suburban single-family residential development; development that reflects the Urban Development Mix category. Truck traffic will go through a suburban – urban - rural landscape.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request for a Conditional Use for soil and sand extraction operation be APPROVED, subject to the following conditions:

1. The UZC's Supplementary Use Regulations found in the Article III, Section III-D.6.gg shall be met unless modified as follows.
2. Between October 2009 and December 2013, Monday – Friday, 7:00 AM – 5:00 PM no more than a total of 20 trucks leaving the site is permitted. All trucks shall leave the site going east on 55<sup>th</sup> Street South. All trucks shall enter the site from the west off of the 55<sup>th</sup> Street South – Meridian Avenue intersection going east on 55th. The applicant is required to post directional signs stating the above requirement on the site.
3. Truck traffic to and from the site will be limited to two (2) trucks between 7:00 A.M. – 8:00 A.M. and between 3:00 P.M. – 4:00 P.M., which are the general hours when school begins and ends at both USD 261 schools. This will be enforced during the school year.
4. A commercial type driveway shall be installed, at the applicants' expense, which meets County standards.
5. Asphalt slag will be laid over the drive used by the trucks, including the internal drive where operations are staged.
6. Contact the County for signage alerting the area around the USD 261 schools about truck traffic. Signage will be at the applicants' expense.
7. In addition to other applicable enforcement remedies, if the Zoning Administrator finds that there is a violation of any of these conditions of approval, the Zoning Administrator may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The site is on the east edge of west, rural Sedgwick County, where it meets the cities of Wichita and Haysville. Zoning is a mix of SF-5 and SF-20 zoning, developed with urban sized single-family residential development or larger suburban size lots. Agricultural fields also occupy both SF-5 and SF-20 zoned properties. The City of Haysville's Campus High School and Ruth Clark Elementary School are located across 55<sup>th</sup> Street South. The City of Wichita's South Lakes Park is also located in the immediate area, on the north side of 55<sup>th</sup> around the north and east sides of the USD 261 schools over to Meridian Avenue.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned SF-5 Single-family Residential, which permits primarily single-family residences. The 15.47-acre site is currently an agricultural field, which is not out of character with the area, but could be platted and developed as single-family residential, as permitted by its current SF-5 zoning.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of the requested Conditional Use will introduce a use not currently found in the immediate area. An increase in truck traffic by up to 20 trips a day, to and from the site, during Phase I of operations (soil extraction) is almost certain from mid October to mid December. The relative small size to be excavated, 4-acres, 25 feet deep, coupled with the requested 4 years to do it and having only one user, could mean less truck traffic, per day, generated off the site during Phase II of operations. Soil erosion and blowing dust are possible. However, the limited scale of the proposed excavation (4-acres) and the proposed conditions of approval mitigate most of the anticipated negative effects on nearby property.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: During Phase I of operations, the extracted soil will be used for the bridge work over the Big Ditch at Hydraulic Avenue and 71<sup>st</sup> Street South; KDOT project 87C4343-01. This is a benefit to the general public. Denial would cause the applicant to look for another site, but may preserve the current mix of agricultural, urban and suburban residential and institutional character of the area.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The site is on the east edge of rural west Sedgwick County. The 2030 Wichita Functional Land Use Guide shows this area located inside of Wichita's 2030 Urban Growth Area and categorized as "Urban Development Mix." This category encompasses land that is likely to be developed by the year 2030. Uses within this category include all types of residential, institutional, commercial, parks, and employment/industrial uses; this category is market driven, with a broad range of development possibilities. Soil and sand extraction is a use dependent on a natural resource; there are several older, finished sand pits in the area. The Wichita/Sedgwick County Comprehensive Plan's Locational Criteria indicates that industrial uses should be located with good access to major arterials, truck routes, belt highways, utility truck lines, rail spurs, and airports. The site has access to 55<sup>th</sup> Street South, an arterial. It is advisable not to locate a sand pit close to an airport, because of the number of birds they can attract. An industrial use should not feed directly into local streets in residential areas. This site does not access a local street, but it will use a shared private drive that the owner and a neighbor use; Staff has not received calls from that neighbor. An industrial use should be located away from existing or planned residential areas and sited so as not to generate industrial traffic through less intensive land uses areas. The area has a mix of institutional, agricultural, urban and suburban single-family residential development; development that reflects the Urban Development Mix category. Truck traffic will go through a suburban - urban - rural landscape.
6. Impact of the proposed development on community facilities: The primary impact of the proposed use is an increase in truck traffic, onto 55<sup>th</sup> Street South. An increase in truck traffic by up to 20 trips a day, to and from the site, during Phase I of operations (soil extraction) is almost certain from mid October to mid December. The relative small size to be excavated, 4-acres, coupled with the requested 4 years to do it and having only one user, could mean less truck traffic generated off the site during Phase II of operations.

**FOSTER** commented that the site plan indicates approximately a four-acre rectangular pond and he was curious as to the intent of the applicant.

**LONGNECKER** said the applicant intended to use the pond for themselves, and that the applicant was present for any other questions, in regards to the use of the pond.

**MITCHELL** said he was concerned about the distance from the top of the pit to the property line shown on the sketch and drawing. He said in his experience erosion will occur and it is impossible to stop once

it gets started. He said natural erosion of the banks of the pit will change the contour of the pond. He suggested using rip-rap, walls or whatever is appropriate to mitigate the situation.

**LONGNECKER** referred to the Supplemental Use Regulations which recommended plantings as a way to control erosion. He said he has not heard any concerns from Public Works Engineering. He asked **MITCHELL** if he cared to make a recommendation beyond what is in the Supplemental Use Regulations.

**MITCHELL** asked if there was any way to gain access from 55<sup>th</sup> Street to this property; by easement or some kind of joint use agreement.

**LONGNECKER** said the driveway was a private drive through the property owner's site back to this proposed pond. He said right now the drive was unimproved gravel and that they were recommending asphalt slag to keep the dust down.

**MITCHELL** verified that there was no requirement for platting.

**LONGNECKER** responded that was correct, as the applicant intended to use the pond for their own use and not build around it.

**MITCHELL** asked about public access along the private drive.

**LONGNECKER** explained that if this sand pit /pond was not going to be used by the owners as their private recreational lake, and that some type of development would be proposed to go around it, then it would have to go through the platting process.

**HILLMAN** commented that this site was well within the five-mile radius of the airport. He encouraged the property owners to consider the bank stabilization guidelines which included planting of tall grasses and other items, and mentioned modifying the motion to include some type of bank stabilization requirements.

**FOSTER** said the site plan also indicates a five-strand barb wire fence which will abut the pond itself. He asked if that was temporary and would that function or would it be located 60 feet south.

**LONGNECKER** said the existing barbed wire fence does not meet standards for fencing around a sand pit that it must be a chain link fence. He said a barbed wire fence would only be allowed in a flood zone where a chain link fence would be considered an obstruction to flow. He then asked if moving the site pond further from the abutting property lines would help address the concerns about erosion.

**DIRECTOR SCHLEGEL** asked the Commission if they wanted more than what is already addressed in the Supplemental Use Regulations attached to the Staff Report, and if so, please tell staff what they are looking for.

**MITCHELL** said he did not think the items mentioned in the Supplemental Use Regulations were sufficient to cover the bank stabilization issue.

**DIRECTOR SCHLEGEL** asked **MITCHELL** what he would consider sufficient.

**MITCHELL** said rip-rap, or some other positive way to control erosion. He said planting grass on a sandy slope next to a body of water that has wind-wave action against it is not a sufficient erosion protection.

**FOSTER** said since this is a closed pond, the applicant will be the only who suffers.

**MITCHELL** said not if erosion goes past the property line.

**FOSTER** asked then shouldn't the distances be more of the focus on this particular case. He said he could understand if this involved drainage overflow that ended up in a river or creek. He said the applicant will receive the hardship and suggested moving the pond.

**MITCHELL** said if the pond is moved, then it increased the likelihood that it will not affect an adjacent homeowner.

**FOSTER** mentioned that the site was within a five-mile distance from the airport and said he thought the waterfowl attractant could be handled by adjusting the regulations to allow un-mowed, native grass to create a buffer for runoff.

**HILLMAN** said he would like to hear suggestions from the applicant on how to solve the problem.

**PAT LEMMONS, FREMAR CORPORATION, 5720 NORTH BROADWAY, AGENT FOR THE OWNER DAN MCCLURE, 1939 WEST 55<sup>th</sup> STREET SOUTH** he explained that Fremar Corp. was going to dig the pond for the applicant.

**CHAIRMAN VAN FLEET** asked if the agent and/or applicant could respond to matters raised by the Commission.

**LEMMONS** said they don't have a problem with moving the pond. He said the perimeter is the actual area of disturbance. He said the pond was for the owners' recreational use so the slopes would be very gentle so that the owner's grand children could walk down to the water's edge to swim or fish. He said the slopes will not be as drastic as a regular sand pit and that they would be willing to move and adjust the size of the pond.

**MARNELL** asked the applicant/agent if they preferred to defer this item and work with staff to come up with solutions.

**DAN MCCLURE** said they would prefer that the application be approved today. He said they are more than willing to work with staff and that they are just trying to get a recreation pond on their property. He also said that the company digging the pond was facing an October deadline for a County bridge project.

**FOSTER** commented that four acres is a fair amount of lake area. He asked if any consideration was given to the fact that it will be an attractant to geese and other waterfowl during the planning process.

**LEMMONS** said there are several ponds in the area including one at Campus High School and the one at the City Park and that he was sure that many waterfowl would be attracted to this pond as well.

**HILLMAN** asked if the pond was a low point or were they simply accessing the water table.

**LEMMONS** said there is no noticeable drainage, because the site and the area were very flat. He said they considered taking off the overburden below the sand, but there was no way the pond would ever hold.

**MCCLURE** said the requirement was for every one foot of drop, there has to be five foot of slope. He said they would be willing to move the pond to whatever distance to the northern boundary that the Commission would like.

**LONGNECKER** said he believed it would be possible for them to meet with Storm Water Engineering on relocation of the pond, as well as slope concerns and birds and bring the item back to the Commission in two weeks (September 24, 2009).

**MCKAY** commented that he did not think that anything could be done about the bird situation

**LONGNECKER** agreed saying that there are numerous ponds and sand pits in the area,

**DIRECTOR SCHLEGEL** asked if the airport had been notified about the application.

**LONGNECKER** commented that he was not sure.

**CHAIRMAN VAN FLEET** asked if any members of the public wished to speak on this item and no one responded.

**MOTION:** To defer for two weeks to September 24, 2009.

**J. JOHNSON** moved, **FOSTER** seconded the motion, and it carried (13-0).

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8. **Case No.: PUD2009-03** - The City of Wichita c/o John Philbrick (owner); Law/Kingdon Inc. c/o Jeff Best (agent) request a City zone change from GC General Commercial to PUD-31, creation of the Nomar International Market Planned Unit Development on property described as:

Lots 1 through 14, inclusive, in Steel and Swentzels Highland 2nd Addition to Wichita, Sedgwick County, Kansas  
AND

Lots 1, 3, 5, 7, 9, 11, and the north 18' 81/4" of lot 13 on Lawrence Avenue, now Broadway Avenue, in Gossard's Subdivision of Gossard's Addition to Wichita, Sedgwick County, Kansas; generally located west of Broadway, north and south of 21st Street North.

**BACKGROUND:** The City of Wichita proposes to create PUD #31, the 1.1 acre Nomar International Market Planned Unit Development, see the attached PUD document. The "PUD" Planned Unit Development special zoning district would replace the current GC General Commercial ("GC") zoning on two parcels. The purpose of the PUD is to create a public market place, based on the Nomar Branding and Architecture guidelines, for an outdoor/indoor public market facility and multi-use events venue. The two-parcel PUD would use the northern parcel (Parcel 1) for a marketplace plaza space and the southern parcel (Parcel 2) for 41 parking stalls. The applicant foresees the first phase of this development as an outdoor marketplace (with one small public building) that could eventually include a large indoor marketplace, see the attached letter and graphics provided by the agent.

The PUD would permit all land uses permitted by right in the LC Limited Commercial ("LC") zoning district except for the following: Adult Entertainment, Residential Uses, Correctional Placement Residences, Cemetery, Golf Course, Car Wash, Asphalt or Concrete Plant, Vehicle Repair, or Convalescent Care. There shall be no more than one freestanding restaurant with drive-in service. Additional uses allowed on Parcel 1 are: indoor/outdoor public market, indoor/outdoor entertainment/festivals, carnivals, sport events, concerts, movie showings, car shows, temporary amusement rides and games, food vendors/prepared foods, outdoor display during hours of operation only, event center, entertainment establishment, and similar uses as determined by the Zoning Administrator.

Parcel 1 would allow 80% building coverage and gross floor area; Parcel 2 would allow 30% building coverage and 35% gross floor area. The entire PUD would allow 35-foot (or two-story) building heights with Zoning Code exceptions for ornamental towers, and zero-lot line building setbacks. The PUD parking requirement is 4 spaces per 1000 square feet of gross area, or 41 spaces. The PUD architectural standards are based on the Nomar Branding and Architecture guidelines, and are consistent with historic

vernacular design in the area. Site design standards include parking-lot and dumpster screening requirements, lighting standards, underground utilities, and landscaping standards different from the Landscape Code, recognizing the desired paved plaza space. Signage standards are consistent with those for LC zoning with some modifications, including design standards consistent with the Nomar Branding and Architecture guidelines. PUD sign standards do allow for limited portable A-frame signs, a gateway tower at the 21<sup>st</sup> and Broadway intersection, an archway sign along 21<sup>st</sup> Street North, and a roof sign on a future marketplace building.

Most property surrounding the application area is zoned GC. One LC zoned property exists northwest of the site, and B Multi-family (“B”) zoning exists northwest of the site. GI General Industrial (GI) zoning exists east of the site. Existing land uses north of the site along Broadway include warehousing, retail, and restaurants. Existing uses north of the site along Market include retail, single-family and two-family residential. Existing land uses south of the site include retail and warehousing. East of the site is the rail corridor, further east are primarily warehousing industrial uses. West of the site are primarily retail uses along Broadway and Market Streets.

**CASE HISTORY:** The northern parcel was platted as a part of Steel and Swentzells Highland 2<sup>nd</sup> Addition in 1888, the southern parcel was platted as part of Gossards Subdivision of Gossards Addition in 1887. The north parcel was previously developed with commercial zero-lot-line buildings; the south parcel was previously developed with a convenience store/gas station. All buildings have now been removed from both parcels. The applicant is in the process of re-platting the property.

**ADJACENT ZONING AND LAND USE:**

NORTH:	GC, LC, B	Warehousing, retail, single-family residences, two-family residences
SOUTH:	GC	Warehousing, retail
EAST:	GC, GI	Rail corridor, warehousing, industrial uses
WEST:	GC	Retail

**PUBLIC SERVICES:** Both Broadway and 21<sup>st</sup> Street North are currently four-lane arterials with a 60-foot right-of-way (ROW). The re-plat for this site, approved by Subdivision Committee and scheduled for MAPC, dedicates ROW for intersection improvements. The re-plat will bring Broadway up to a 92-foot ROW at the intersection, and 21<sup>st</sup> Street North up to a 90-foot ROW at the intersection. All municipal services are available at the site.

**CONFORMANCE TO PLANS/POLICIES:** The “2030 Wichita Functional Land Use Guide” of the *Wichita-Sedgwick County Comprehensive Plan* identifies this site as Local Commercial. The site is within the 21<sup>st</sup> Street North Corridor Redevelopment Plan; the proposed PUD is consistent with the recommendations of that plan.

The Unified Zoning Code states that a PUD is intended to create a superior quality development that may not conform to all the requirements of the Unified Zoning Code by:

- (1) Reducing or eliminating the inflexibility that sometimes results from strict application of zoning standards that were designed primarily for individual lots;
- (2) Allowing greater freedom in selecting the means to provide access, light, open space and design amenities;
- (3) Promoting quality urban design and environmentally sensitive development by allowing development to take advantage of special site characteristics, locations and land uses; and
- (4) Allowing deviations from certain zoning standards that would otherwise apply if not contrary to the general spirit and intent of this Code.

The proposed PUD incorporates architectural standards, site design standards, and signage standards that will enhance the quality of the proposed development.

**RECOMMENDATION:** Under the current GC zoning, the applicant could do similar uses to those proposed in this PUD, such as Outdoor Entertainment and Recreation and Farmers Markets. The proposed PUD will incorporate design standards which should benefit the surrounding neighborhood. Based on the information available prior to the public hearing, staff recommends the application be **APPROVED subject to platting within one year.**

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** North of the site along Broadway is zoned GI and is developed with warehousing, retail, and restaurants. North of the site along Market is zoned LC and B, and is developed with retail, single-family residences and two-family residences. South of the site is zoned GC and is developed with retail and warehousing. East of the site is the GC zoned rail corridor; further east is GI zoning with warehousing and other industrial uses. West of the site is zoned GC and is developed with retail uses along Broadway and Market Streets.
2. **The suitability of the subject property for the uses to which it has been restricted:** The property could continue to be used for General Commercial uses as it is currently zoned.
3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** Approval of the requested PUD will not permit land uses which were not allowed under the current GC zoning. Redevelopment of the site could affect nearby property with increased traffic, activity, noise and light. The proposed PUD should mitigate these effects with site design standards.
4. **Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies:** The "2030 Wichita Functional Land Use Guide" of the *Wichita-Sedgwick County Comprehensive Plan* identifies this site as Local Commercial. The site is within the 21<sup>st</sup> Street North Corridor Redevelopment Plan; the proposed PUD is consistent with the recommendations of that plan.
5. **Impact of the proposed development on community facilities:** The proposed development could generate more traffic on Broadway and 21<sup>st</sup> Street North than the previous development. The proposed re-plat of this site makes ROW dedications which will allow for intersection improvements.

**DALE MILLER**, Planning Staff presented the staff report.

**MITCHELL** said he was unable to read the size of the print on the copy of the Planned Unit Development he was provided. He said he had several questions regarding the guidelines. He asked about design standards consistent with the Nomar branding and architectural guidelines. He asked who approved the guidelines. He said he also wanted to inquire about the archway sign along 21<sup>st</sup> Street.

**MILLER** said he would refer those questions to the architect.

**JEFF BEST, LAW KINGDON, 345 RIVERVIEW AGENT FOR THE CITY OF WICHITA, APPLICANT** commented that the architectural branding guidelines are recommendations for the district.

**DIRETCOR SCHELGEL** said the design guidelines had been accepted by the City Council and are posted on the City's and the 21<sup>st</sup> Business Association's WEB sites, but that staff could provide **MITCHELL** a hard copy for review.

**DAVID MULLHAGEN, CLEAR CHANNEL OUTDOOR ADVERTISING, 3405 NORTH HYDRAULIC** said the Nomar international market place represents a great opportunity for entrepreneurs and that they are requesting an opportunity to be part of the development. He mentioned adding on-site signs to sign provisions. He said they would like the opportunity to see how the site will develop further and how they can fit into it. He said he realized there was the plat and other concepts to be worked out. He said they were asking for an opportunity to work with the development. He mentioned that one of their billboards had been removed in order to widen the street and they did that thinking that they would be given an opportunity to replace that billboard and that is what they are asking for.

**DIRECTOR SCHLEGEL** asked if **MR. MULLHAGEN** if he had discussed this issue with the applicant.

**MULLHAGEN** said the applicant wanted a 3-D design. He said all they are asking for is the opportunity.

**MCKAY** commented that he didn't think the Planning Commission had anything to do with what **MR. MULLHAGEN** was asking for. He said the Planning Commission could not guarantee that **MR. MULLHAGEN** would get an opportunity to work on the project, because it was out of line for them to do so.

**FOSTER** referred to the last line under "additional uses allowed" and asked if the wording should be *determined* or *approved* by the zoning administrator.

**MILLER** said the wording that the zoning administrator may *determine* other uses is appropriate.

**FOSTER** briefly reviewed several spelling, typographical and grammatical errors in the Planned Unit Development document for correction.

**MOTION:** To approve subject to staff recommendation.

**HILLMAN** moved, **MCKAY** seconded the motion, and it carried (13-0).

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9. **Case No.: CON2009-11** - City of Wichita Water Utility (Deb Ary) / Professional Engineering Consultants (Rob Hartman) request modification to CON2009-11 to permit a 120-foot "wireless communication facility" instead of a 100-foot tall structure on property described as:

The South Half of the Northeast Quarter, in Section 12, Township 25 south, Range 2 West of the 6th P.M., Sedgwick County, Kansas; generally located 1/4 mile south of the corner of 119th Street West and 117th Street North on the west side of 119th Street West.

**BACKGROUND:** The City of Wichita Water Utility is seeking Conditional Use approval to permit a "utility, major," (potable water treatment plant and electric substation) and a 100-foot tall wireless communications facility on 80 acres, zoned RR Rural Residential ("RR"), located one-quarter-mile south of 117<sup>th</sup> Street North and west of 119<sup>th</sup> Street West. The requested facilities are associated with Phase II of the City of Wichita's Aquifer Storage and Recovery (ASR) project. The ASR project pulls excess water from the Little Arkansas River during periods of high flow and treats the raw water. The filtered water will be piped to injection sites and put into the aquifer where it is stored for later use. The water pulled from the Little Arkansas River for the ASR project is water that would normally be lost for local beneficial use because the water used in this program is not part of the river's normal water profile that naturally assists with the aquifer's recharge or is used for irrigation or residential wells. Without this program the river water used in the ASR project would just flow south, and be lost for beneficial use in this area.



Water allocations for the Equus Beds exceed sustainable yield. Projects of this type enhance the quality and quantity of beneficial yield of the aquifer, creating a more sustainable water supply.

Specifically, the applicant seeks to develop the site with an electric substation to serve the treatment plants electrical needs, a potable water treatment plant and its ancillary facilities (clear wells, membrane facilities, pre-sedimentation basins, advanced oxidation process (AOP) buildings, maintenance buildings, residence for an on-site maintenance employee, pump houses, lateral fields, wash water recovery basin and outside storage) and a 100-foot tall wireless communications facility. The water treatment plant will have the capacity to process up to 30 million gallons of water per day. The 100-foot tall wireless communications tower will enable the plant's operations to be remotely monitored. The location of the proposed wireless communications tower meets specified height and setback standards. All of the sites proposed facilities will be enclosed within an eight-foot high chain link fence. The sites proposed two points of access to 119<sup>th</sup> Street West are to be gated. A buried gas pipeline that is located in the southern one-third of the site influenced the facility's layout, forcing the plant to be located in the northern two-thirds of the application area. The applicant's site plan depicts a 100-foot wide building setback along the north and south property lines, and a 50-foot wide setback along the east and west property line. A 30-foot landscape buffer is proposed along a portion of the site's northwest property line where the application area shares a one-quarter mile border with smaller ownerships (4.86 acres to 10.22 acres) that have been developed with residences, and a saddle club's facilities.

The site is currently used as farmland as is all the surrounding property except for the previously mentioned residences and saddle club, and a City of Wichita aquifer recharge facility located east of 119<sup>th</sup> Street West. The City of Wichita also owns the 40 acres located east of the previously mentioned residences and north of the application area. Except for the small tracts developed with residences, nearby properties are all 40 acres or larger in size.

**CASE HISTORY:** The property was zoned RR in 1985 when the county adopted county-wide zoning.

**ADJACENT ZONING AND LAND USE:**

NORTH: RR, Rural Residential; large-lot residential and farmland  
SOUTH: RR, Rural Residential; farmland  
EAST: RR, Rural Residential; farmland; aquifer recharge facility  
WEST: RR, Rural Residential; farmland

**PUBLIC SERVICES:** 119<sup>th</sup> Street West has 60 feet of total road right-of-way, and is constructed with sand and gravel that is maintained by the township.

**CONFORMANCE TO PLANS/POLICIES:** The application area is located just inside Bentley's Zoning Area of Influence ("ZAOI"). According to provisions contained in the *Wichita-Sedgwick County Unified Zoning Code*, the Bentley Planning Commission is to be given the opportunity to review and make a recommendation prior to the case being forwarded to the Metropolitan Area Planning Commission (MAPC). After hearing the case, and if the Bentley Planning Commission recommends denial, the code specifies that the Board of County Commissioners may overturn a denial by Bentley's planning commission with a unanimous vote.

As designated on the County's 2030 functional land use guide, the application area is also located inside Bentley's 2030 Urban Growth Area. Property designated as being an urban growth area is typically located adjacent to a city's municipal boundaries, and could be expected, depending upon direction and magnitude of population growth, to be developed by 2030. Growth areas are also determined by individual municipal political considerations, infrastructure limitations and the ability of a city to cost effectively deliver a full range of urban services. The MAPC has a history of supporting industrial uses in rural area when the proposed use is resource based. The utilities location guidelines of the

Comprehensive Plan indicate utility facilities that produce significant noise, odor and other nuisance elements should be located away from residential areas.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to platting within 1-year, and the following conditions:

- A. The Conditional Use permits the installation of a potable water treatment plant and the ancillary uses depicted on the approve site plan, an electric substation, a 100-foot tall wireless communication facility, a residence, outside storage and maintenance buildings.
- B. The site shall be developed and maintained in substantial conformance with the approved site plan, and in compliance with all applicable local, state and federal regulations and codes, unless specifically modified by this conditional use.
- C. Prior to the issuance of a building permit, the applicant shall submit for approval a landscape plan for the landscape buffer depicted on the site plan. The landscape buffer shall contain, at a minimum, the equivalent of one tree and five shrubs every 30 feet. The required landscaping shall be installed prior to commencing operations or during the first growing season following the commencement of operations.
- D. Construction shall begin on the project within five years or the conditional use may be made null and void. At the end of the five year period previously mentioned, the Director of Planning and the Zoning Administrator may administratively extend the time period to commence the project up to three years.
- E. Signage is limited to a maximum of 32 square feet, not taller than 10 feet. If the sign is lighted, lighting shall be designed to minimize light pollution and night time glare.
- F. If the Zoning Administrator finds there is a violation of any of the conditions of approval, the Zoning Administrator, in addition to enforcing other remedies set forth in Article VIII of the Unified Zoning Code may, with the concurrence of the Planning Director, declare the conditional use null and void.

This recommendation is based on the following findings:

- 1. The zoning, uses and character of the neighborhood: All properties surrounding the site are zoned RR Rural Residential. The overwhelming majority of surrounding land is used as farmland. There are approximately seven tracts that have been developed with single-family residences or a saddle club. The character of the area is farmland with scattered farmsteads, large-lot residences, a church and a cemetery.
- 2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned RR Rural Residential, which allows agriculture and residences with a minimum lot size of between two and four and one-half acres, depending upon the on-site sewer solution. The site could be developed as currently zoned, but probably not by the City of Wichita for any RR use allowed by right. The proposed use is dependent upon being located in the Equus Beds, and within a reasonable proximity of the Little Arkansas River.
- 3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of will introduce a use that is not currently present in the immediate area. The applicant's proposed site plan includes increased setbacks and landscape buffers, and staff's proposed conditions of approval should mitigate anticipated impacts.
- 4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Approval of the request will increase the quantity and enhance the quality of water available for aquifer recharge, which will in turn, increase the amount of water available for both public and private beneficial use. Denial would presumably decrease the potential amount of water stored in the aquifer, negatively impacting the public's

health, safety and welfare; and would increase the cost of providing enhanced water supplies.

5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: As designated on the County's 2030 functional land use guide, the application area is also located inside Bentley's 2030 Urban Growth Area. Property designated as being an urban growth area is typically located adjacent to a city's municipal boundaries, and could be expected, depending upon direction and magnitude of population growth, to be developed by 2030. Growth areas are also determined by individual municipal political considerations, infrastructure limitations and the ability of a city to cost effectively deliver a full range of urban services. The MAPC has a history of supporting industrial uses in rural area when the proposed use is resource based. The utilities location guidelines of the Comprehensive Plan indicate utility facilities that produce significant noise, odor and other nuisance elements should be located away from residential areas.
6. Impact of the proposed development on community facilities: Approval will provide the means to increase stored water volume and quality that can be made available for beneficial use. Water allocations for the Equus Beds exceed sustainable yield. Projects of this type enhance the quality and quantity of beneficial yield of the aquifer, creating a more sustainable water supply.

**DALE MILLER**, Planning Staff presented the staff report.

**MOTION:** To approve subject to staff recommendation.

**B. JOHNSON** moved, **HENTZEN** seconded the motion, and it carried (13-0).

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### **NON-PUBLIC HEARING ITEMS**

#### **10. Other Matters/Adjournment**

##### **Red Box Update**

**MILLER** referred Commission members to a staff memo attached to the agenda packet dated September 3, 2009, Re: Report on drop-off boxes, which he said summarizes the current situation as it stands. He said the agent's secretary reported that they are in the process of working with the Office of Central Inspection concerning the situation by either filing applications for the different sites, or coming before the Planning Commission or the governing body and asking them to direct staff to review the item and see if it is appropriate to amend the zoning code.

**J. JOHNSON** asked how many locations were involved.

**MILLER** responded approximately 71.

**MARNELL** asked, just out of curiosity, who owns those boxes?

**MILLER** said they assumed it was American Recyclers out of Tulsa, Oklahoma.

**HILLMAN** asked whether a local business license is required.

**MILLER** said they don't know if the Office of Central Inspection requires a license. He said some of the containers are not placed in compliance with the Unified Zoning Code and that is how Planning became

involved. He said the containers located in the right-of-way have been identified and a request has been made to remove those and move them onto private property. He said staff will follow-up on this issue.

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The Metropolitan Area Planning Department informally adjourned at 2:34 p.m.

State of Kansas                )  
Sedgwick County            ) <sup>ss</sup>

I, John L. Schlegel, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on \_\_\_\_\_, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
John L. Schlegel, Secretary  
Wichita-Sedgwick County Metropolitan  
Area Planning Commission

(SEAL)